Supreme Court, U.S.
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No. 98-699

IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

JOSEPH E. BOYETT,
Petitioner,

v.

TROY STATE UNIVERSITY AT MONTGOMERY (TSUM); DR. JACK HAWKINS, JR., individually and as Chancellor of the Troy State University System; DR. GLENDA MCGAHA-CURRY, individually and as president of TSUM; DR. LIVINGSTON ALEXANDER, individually and as Vice President for Academic Affairs of TSUM; DR. MATTHEW MARIANO, individually and as Interim Dean of Computer & Information Science and Mathematics Division,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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REASONS FOR GRANTING THE WRIT

At page 15 of their brief in opposition, the Respondents discount the applicability of *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982) by saying that "the plaintiff there had a constitutionally protected property interest, 455 U.S. at 430, while Boyett in contrast did not."

The Respondent's argument is disingenuous, because the property interest identified in *Logan* and the property

interest claimed by Boyett are essentially the same—the right of access to state-established administrative adjudicatory machinery.

This case presents a type of convergence of constitutional issues that perhaps is not present in most cases.

First, this Court has held conclusively that government may not penalize one for the exercise of constitutional freedoms, because to do so would "allow the government to 'produce a result which [it] could not command directly.' " *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (quoting from *Speiser v. Randall*, 357 U.S. 513, 526 [1958]). In *Perry*, the Court also noted that "[s]uch interference with constitutional rights is impermissible." *Id.* The provisions of the right to petition for redress contained in the First Amendment are frequently implemented by governmental agencies through their grievance procedures. The teaching of *Logan* is that, once these procedures are established, the right of access to them becomes a property right protected by the Fourteenth Amendment. When one accesses that procedure, even though the complaint involves only personal matters, and perhaps not matters of public concern, punishment therefore simply should not be permitted unless the grievant somehow misuses the procedure. Thus, a violation of the Fourteenth Amendment has occurred.

Second, encouraging a government employee to utilize grievance procedures, and then punishing him for doing so, produces an unconscionable result. As the Petitioner has previously pointed out, such a practice borders on the absurd and a similar practice was condemned in *Heckler v. Community Health Service*, 467 U.S. 51, 61 n. 13 (1984) by quoting from *Brandt v. Hickel*, 427 F.2d 53, 57 (9th Cir. 1970) ("To say to these appellants, 'The joke is on you. You shouldn't have trusted us,' is hardly worthy of our great government.") If the right to petition

is to have any meaning, punishment for its exercise must be prohibited.

Respectfully submitted,

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